



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0022; FRL-8841-01-R4]

Air Plan Approval; Mississippi; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of administrative change.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Mississippi State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by Mississippi and approved by EPA. In this notice, EPA is also notifying the public of corrections to one of the Code of Federal Regulations (CFR) table that identifies material incorporated by reference into the Mississippi SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The SIP materials whose incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: EPA, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303 and www.regulations.gov. To view the materials at the Region 4 Office, EPA request that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. LaRocca can be reached via telephone at (404) 562-8994 or via electronic mail

at *larocca.sarah@gmail.com*.

SUPPLEMENTARY INFORMATION:

I. Background

Each State has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each State must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally approved SIP and are identified in part 52 – “Approval and Promulgation of Implementation Plans,” Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the State regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52 but is “incorporated by reference.” This means that EPA has approved a given State regulation or specified changes to a given regulation with a specific effective date. The public is referred to the location of the full text version of the regulation(s) should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a State implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on proposed revisions containing new and/or revised regulations. A submission from a State can revise one or more rules in their entirety or portions of rules. The State indicates the changes in the submission (such as by using redline/strikethrough text), and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification

Number, which is listed in each action. These dockets and the complete submission are available for viewing on www.regulations.gov.

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations (CFR), materials approved by EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain "SIP Compilations" that contain the federally approved regulations and source-specific permits submitted by each State agency. EPA generally updates these SIP Compilations on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the *Federal Register* notifying the public that updates have been made to a SIP Compilation for a particular State. EPA began applying the 1997 revised procedures to Mississippi on July 1, 1997, and is providing this notice in accordance with such procedures. *See* 62 FR 35441.

II. EPA Action

In this action, EPA is providing notice of an update to the materials incorporated by reference into the Mississippi SIP as of December 19, 2022, and identified in 40 CFR 52.1270(c). This update includes SIP materials approved by EPA since the last IBR update. *See* 75 FR 1712 (January 13, 2010). In addition, EPA is providing notice of the following corrections to paragraph (c) of § 52.1270:

Changes Applicable to EPA-Approved Mississippi Regulations

- A. Correcting Table (c)'s title, from "*(c) EPA Approved Mississippi Regulations.*" to "*(c) EPA-Approved Mississippi Laws and Regulations.*"
- B. Correcting the header of paragraph (c), from "EPA-Approved Mississippi Regulations" to "EPA-Approved Mississippi Laws and Regulations".
- C. Correcting a typographical error in the CFR under 11 MAC Part 2 - Chapter 1, Rule 1.9,

changing the title “Stack Height Considerations.” to “Stack Height Considerations”.

- D. Correcting a typographical error in the CFR under 11 MAC Part 2, Chapter 2, Rule 2.7, changing the title “Emission Evaluation Report” to “Emissions Evaluation Report”.
- E. Correcting a typographical error in the CFR under Mississippi Code, Section 25-4-29, changing the title “Filing dates for statement” to “Filing dates for statements”.
- F. Correcting a typographical error in the CFR under Mississippi Code, Section 25-4-105, changing the title “Certain actions, activities and business relationships prohibited or authorized; contacts in violation of section voidable; penalties” to “Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable; penalties”.

III. Good Cause Exemption

EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs, makes typographical/ministerial revisions to a table in the CFR, and makes ministerial changes to the prefatory heading to the table in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are “impracticable, unnecessary, or contrary to the public interest.” Public comment for this administrative action is “unnecessary” and “contrary to the public interest” since the codifications (and corrections) only reflect existing law. Immediate notice of this action in the *Federal Register* benefits the public by providing the public notice of the updated Mississippi SIP Compilation and notice of corrections to the Mississippi “Identification of Plan” portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP

compilation and the CFR “Identification of plan” section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Mississippi and federally effective prior to December 19, 2022. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this final rule and notification of administrative change does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the Mississippi SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 3, 2023.

Daniel Blackman,
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Z—Mississippi

2. In § 52.1270, paragraphs (b) and (c) are revised to read as follows:

§ 52.1270 Identification of plan.

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(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 19, 2022, for Mississippi was approved for incorporation by reference by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the *Federal Register*. Entries in paragraph (c) of this section with EPA approval dates after December 19, 2022, for Mississippi will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW, Atlanta, GA 30303. To obtain the material, please call (404) 562-9022. You may inspect the material with an EPA approval date prior to December 19, 2022, for Mississippi at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA email fedreg.legal@nara.gov or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) *EPA-Approved Mississippi laws and regulations.*

Table 1 to Paragraph (c)— EPA-Approved Mississippi Laws and Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
11 MAC Part 1 - Chapter 5 Mississippi Environmental Quality Permit Board: Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act				
Rule 5.1	Description of Mississippi Environmental Quality Permit Board	5/11/2018	10/4/2018, 83 FR 50014	

11 MAC Part 2 - Chapter 1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants				
Rule 1.1	General	6/25/2018	10/4/2018, 83 FR 50014	Except paragraphs (C)(1) and (2), which EPA has not approved into the SIP.
Rule 1.2	Definitions	7/25/2013	2/21/2020, 85 FR 10070	Except the definition of “Air Quality Action Day,” which EPA has not approved into the SIP.
Rule 1.3	Specific Criteria for Sources of Particulate Matter	7/25/2013	2/21/2020, 85 FR 10070	Except paragraph (G)(4), which is state effective February 9, 2009, and paragraph (G)(5), which is not approved into the SIP.
Rule 1.4	Specific Criteria for Sources of Sulfur Compounds	7/25/2013	2/21/2020, 85 FR 10070	
Rule 1.5	Specific Criteria for Sources of Chemical Emissions	7/25/2013	2/21/2020, 85 FR 10070	
Rule 1.6	New Sources	7/25/2013	2/21/2020, 85 FR 10070	Except paragraphs (2) and (3), which EPA has not approved into the SIP.
Rule 1.7	Exceptions	7/25/2013	2/21/2020, 85 FR 10070	
Rule 1.9	Stack Height Considerations	7/25/2013	2/21/2020, 85 FR 10070	
Rule 1.10	Provisions for Upsets, Startups, and Shutdowns	12/10/2016	11/18/2022, 87 FR 69177	Except for Rule 1.10.A and 1.10.B(3).
Rule 1.11	Severability	7/25/2013	2/21/2020, 85 FR 10070	
Rule 1.14	Provision for the Clean Air Interstate Rule	7/25/2013	2/21/2020, 85 FR 10070	
11 MAC Part 2 - Chapter 2 Permit Regulations for the Construction and/or Operation of Air Emissions Equipment				
Rule 2.1	General Requirements	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.2	General Standards Applicable to All Permits	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.3	Application For Permit To Construct and State Permit	7/25/2013	2/21/2020, 85 FR 10070	

	To Operate New Stationary Source			
Rule 2.4	Public Participation and Public Availability of Information	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.5	Application Review	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.6	Compliance Testing	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.7	Emissions Evaluation Report	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.8	Procedures for Renewal of State Permit To Operate	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.9	Reporting and Recordkeeping	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.10	Emission Reduction Schedule	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.11	General Permits	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.12	Multi-Media Permits	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.13	Exclusions	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.14	CAFOs	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.15	Options	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.16	Permit Transfer	7/25/2013	2/21/2020, 85 FR 10070	
Rule 2.17	Severability	7/25/2013	2/21/2020, 85 FR 10070	
11 MAC Part 2 - Chapter 3 Regulations for the Prevention of Air Pollution Emergency Episodes				
Rule 3.1	General	7/25/2013	2/21/2020, 85 FR 10070	
Rule 3.2	Definitions	7/25/2013	2/21/2020, 85 FR 10070	
Rule 3.3	Episode Criteria	7/25/2013	2/21/2020, 85 FR 10070	

Rule 3.4	Emission Control Action Programs	7/25/2013	2/21/2020, 85 FR 10070	
Rule 3.5	Emergency Orders	7/25/2013	2/21/2020, 85 FR 10070	Except the removal of language from the “Emergency” level for coal or oil-fired process steam generating facilities under Rule 3.5, Table 1, Section 2, which is state effective June 3, 1988.
11 MAC Part 2 - Chapter 5 Regulations for the Prevention of Significant Deterioration of Air Quality				
Rule 5.1	Purpose of this Regulation	5/28/2016	8/8/2017, 82 FR 37015	
Rule 5.2	Adoption of Federal Rules by Reference	5/28/2016	9/16/2020, 85 FR 57707	The version of Rule 5.2 in the SIP does not incorporate by reference the provisions at § 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (published in the <i>Federal Register</i> March 30, 2011).
11 MAC Part 2-11 Regulations for Ambient Air Quality Nonattainment Areas				
Rule 11.1	General	9/26/2015	1/12/2016, 81 FR 1321	
Rule 11.2	Definitions	9/26/2015	1/12/2016, 81 FR 1321	
Rule 11.3	Emissions Statement	9/26/2015	1/12/2016, 81 FR 1321	
Mississippi State Constitution				
Article 4 Section 109	Interest of Public Officers in Contracts	9/27/2012	4/8/2013, 78 FR 20795	
Mississippi Code				
Section 25-4-25	Persons required to file statement of economic interest	9/27/2012	4/8/2013, 78 FR 20795	

Section 25-4-27	Contents of statement of economic interest	9/27/2012	4/8/2013, 78 FR 20795	
Section 25-4-29	Filing dates for statements	9/27/2012	4/8/2013, 78 FR 20795	
Section 25-4-101	Declaration of public policy	9/27/2012	4/8/2013, 78 FR 20795	
Section 25-4-103	Definitions	9/27/2012	4/8/2013, 78 FR 20795	
Section 25-4-105	Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable; penalties	9/27/2012	4/8/2013, 78 FR 20795	
Section 49-2-5	Commission on Environmental Quality	7/1/2016	10/4/2018, 83 FR 50014	

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[FR Doc. 2023-07468 Filed: 4/11/2023 8:45 am; Publication Date: 4/12/2023]